

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW MEXICO  
3

4 JOHN TRUJILLO,  
5 Plaintiff,

6 v. No. 15-CV-00901 JB-WPL

7 RIO ARRIBA COUNTY ex rel, RIO  
8 ARRIBA COUNTY SHERIFF'S  
9 DEPARTMENT, DEPUTY GILBERT  
10 ATENCIO, in his individual  
11 capacity, and LIEUTENANT  
12 MARVIN ARMIJO, in his  
13 individual capacity,  
14 Plaintiff.

15 DEPOSITION OF MURRAY CONRAD

16 May 2, 2016

17 1:10 p.m.

18 500 4th Street, Suite 105  
19 Albuquerque, New Mexico 87102  
20

21 PURSUANT TO THE FEDERAL RULES OF CIVIL  
22 PROCEDURE, this deposition was:

23 TAKEN BY: JAMES P. SULLIVAN  
24 ATTORNEY FOR DEFENDANT'S  
25

26 REPORTED BY: PAUL BACA, CCR #112  
27 PAUL BACA COURT REPORTERS  
28 500 4th Street, NW, Suite 105  
29 Albuquerque, New Mexico 87102  
30

31 PAUL BACA PROFESSIONAL COURT REPORTERS  
32 500 FOURTH STREET NW - SUITE 105, ALBUQUERQUE, NM 87102

1 just throwing at it every once in a while because  
2 you don't smell anything, then it's not permissible.

3 So my statement was that there's no  
4 indication anywhere until the bitter end that anyone  
5 even smelled alcohol.

6 There was no -- no indication anywhere  
7 that he had bloodshot watery eyes or slurred speech  
8 until the very end.

9 That's just what I'm pointing out.

10 Q. (By Mr. Sullivan) Okay. I understand  
11 that.

12 But would you agree with me that if you're  
13 trying to find out if someone has been drinking, one  
14 of the ways you can is you can actually smell it, as  
15 an officer?

16 A. That is correct.

17 Q. And that might confirm he's been drinking,  
18 right?

19 A. That would definitely confirm that.

20 Q. And another way you might find out if he's  
21 been drinking, if the guy is honest enough to say, I  
22 have been drinking.

23 A. Sure.

24 Q. And that would be an indication of  
25 drinking?

1 conducted, right?

2 A. We were talking about the lack of original  
3 indicators.

4 Q. Right. But we talked --

5 A. Yes.

6 Q. But we did agree that one beer is an  
7 indicator, and it may be permissible for the  
8 officer, based upon that, to take it to the next  
9 step, and let's do field sobriety tests, correct?

10 A. Yes.

11 Q. Okay. Let's get to the field sobriety  
12 test part here.

13 A. All right.

14 Q. Do you have any criticisms as to that?

15 A. I do. And get ready. Here we go.

16 Q. Okay.

17 A. So first of all, Mr. Trujillo is told to  
18 exit the vehicle.

19 The indications from Deputy Atencio was  
20 that he had a hard time getting out and had to hold  
21 on to the car for balance.

22 Now normally, those would be real good  
23 indicators of possible impairment. But the  
24 immediate factors that I saw was the age of  
25 Mr. Trujillo, his weight. And those are immediate



1 factors that have to be considered before  
2 administering the sobriety tests.

3 Now, you noticed I didn't say standardized  
4 sobriety tests.

5 Q. Okay.

6 A. There are lots of divided attention tests  
7 that you can administer to somebody who is  
8 overweight.

9 And one of the indicators that I put in  
10 there from Dr. Burns, in the Southern California  
11 Institute, was somebody who is 65 years old or  
12 older, or someone who is overweight, may have a hard  
13 time passing the standardized field sobriety tests  
14 sober.

15 Q. Okay.

16 A. So weight and age are something that you  
17 definitely have to consider.

18 Q. Okay. And what are the alternatives,  
19 then, of doing a field sobriety test if somebody is  
20 68 and they're heavy or overweight?

21 A. Well, you're still going to do a field  
22 sobriety test, but it just won't be the  
23 standardized.

24 Q. What is that?

25 A. Which is the horizontal gaze nystagmus,

1       A.     -- arthritic, you know. Those are the  
2 things that you, as the officer, you've got to look  
3 for.

4       Q.     Right.

5       A.     And there's no indication of that either.

6       Q.     Right. Okay.

7       A.     All right.

8       Q.     And also the eye nystagmus -- I can never  
9 pronounce that correctly.

10      A.     That is correct. It's a horizontal gaze  
11 nystagmus.

12      Q.     Right. And that is not impaired by you  
13 being overweight, is it?

14      A.     No.

15      Q.     Nor by being 60 -- mid 60s, is it?

16      A.     That is -- that is correct.

17      Q.     Okay. And he failed that test, correct?

18      A.     The -- the deputy indicates that he had  
19 all six indicators on the nystagmus, correct.

20      Q.     Okay. All right.

21             And -- okay. Let's continue on.

22      A.     All right. So what you've marked as  
23 Exhibit 1, and through the interviews that I've done  
24 with Mr. Trujillo, Mr. Trujillo asked to retrieve  
25 his walking cane from the vehicle.

1 But what it doesn't indicate is that  
2 Mr. Trujillo swayed, if he was unbalanced during  
3 this test.

4 Q. Okay.

5 A. Just pointing that out.

6 Q. Okay.

7 A. Which is a dramatic contrast from the exit  
8 sequence of Mr. Trujillo.

9 Q. Let's talk about the gaze eye nystagmus  
10 test here on page --

11 A. Okay.

12 Q. -- they're not numbered, but it looks like  
13 page 4 of your report.

14 A. Okay.

15 Q. If you want to turn to that.

16 A. (Witness complies.)

17 Q. So you don't have any reason to doubt that  
18 the six indicators -- exhibited all six indicators,  
19 do you?

20 A. No.

21 Q. Okay.

22 A. And here's why. Diazepam and the  
23 metabolite of Diazepam -- and it's basically Valium,  
24 the brand name -- is a central nervous system  
25 depressant. Alcohol, beer, is a central nervous



1       A.    It is an indicator that, yeah, that  
2   something is causing the nystagmus, and that could  
3   be -- it could be the central nervous system  
4   depressant. It could be PCP. It -- I mean, there's  
5   so many different things that cause impairment.

6   And...

7       Q.    And it could be alcohol?

8       A.    Sure. Absolutely.

9       Q.    And especially it could be alcohol if the  
10   guy has admitted to you that he had been drinking?

11      A.    Sure.

12      Q.    Okay. Let's go down the same page,  
13   Mr. Conrad, at the bottom paragraph where it begins:

14               "I interviewed John Trujillo by phone."

15      A.    Uh-huh.

16      Q.    Mr. Trujillo tells you he suffers from  
17   diabetic neuropathy?

18      A.    Correct.

19      Q.    Do you know what that is?

20      A.    I do. My mother suffered from the same  
21   thing. It causes nerve damage. So you could either  
22   have total numbness of a limb to shooting pains,  
23   burning.

24      Q.    So this is a complication of diabetes,  
25   correct?

1           A.     He is waiting on a kidney transplant, but  
2     he can't do that because he's got a blocked artery  
3     to his heart.

4           Q.     Okay. You put kidney transplant, waiting  
5     for a kidney transplant, in your report here.

6                     Would you agree with me that it's also  
7     probably not good to drink alcohol if you have what  
8     are obviously serious kidney issues?

9           MS. HACSI: Object to form.

10          Q.     (By Mr. Sullivan) Would you agree with  
11     that?

12          A.     I would tend to agree with that.

13          Q.     It could compromise your metabolism,  
14     right?

15          A.     Sure. Sure.

16                     Can we go back on the same page?

17          Q.     Sure.

18          A.     All right. So Deputy Atencio finally  
19     ascertains -- or Mr. Trujillo provided the  
20     information that he had serious knee problems.

21          Q.     Right.

22          A.     Deputy Atencio then says, Well, let me  
23     have you walk, and walk back.

24                     And from that short number of steps -- I  
25     don't know how many it was -- he determined that



1 Mr. Trujillo was then capable of performing the  
2 standardized field sobriety tests.

3 And there again, he's not a doctor.  
4 That's not something that we've ever trained, as  
5 part of the standardized field sobriety tests, or  
6 anything else, for you to make that determination,  
7 especially when somebody has indicated that they  
8 have injuries, illnesses. You don't know what  
9 the -- you don't know how bad that problem is and  
10 how that would affect your tests.

11 Now the tests are standardized on people  
12 that are not injured, they're not old, they're not  
13 overweight.

14 Q. Right.

15 A. And so you get your pass or fail clues  
16 from the standardization.

17 So even though he -- Deputy Atencio  
18 attempted to give the standardized tests, as he was  
19 trained, I'm assuming, there's no standardization  
20 there because of the reported injury to the knees.

21 Q. And correct me if I'm wrong. But if one  
22 has a 30 percent impairment of the knee or a knee  
23 injury, it probably wouldn't affect this highly  
24 reliable test you talked about, the eye gaze  
25 nystagmus test, would it?